SUBJECT INDEX

		Page
A.	Cases Identified	2
B.	Jurisdiction	2
C.	Questions for Review	3
D.	Relevant Provisions	4
E.	Statement of Case	12
F.	Support for Issuance of Writ	13
G.	Opinion	19
H.	Judgment or Decree	29

STATUTES CITED

1. United States Constitution, Article 1, Section 8, paragraph 1 4
2. United States Constitution, Amendment IV 4
3. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-247 5
4. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-248 5
5. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-249 6
6. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-250 7
7. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-251 8
8. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-252 8
9. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-253 9
10. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-254 10
11. Wyoming Statutes 1957, (1969 Cumulative Supplement) § 6-255 10
12. Wyoming Constitution, Article 3, § 24. 11

PETITION FOR WRIT OF CERTIOARI

Section A. Petitioners respectfully submit this petition for Writ of Certiorari to review the cases of Leo Weiss, Appellant, vs. the State of Wyoming on the relation of G. Joseph Cardine, County and Prosecuting Attorney, Natrona County, Wyoming, Appellee, and Fifi Belondon, Appellant, vs. State of Wyoming on the relation of G. Joseph Cardine, County and Prosecuting Attorney, Natrona County, Wyoming, Appellee, both reported at 455P. 2d 904.

Section B. The jurisdiction of this Court is invoked on the following grounds: The judgment and decree was entered in Civil Action 30604 in the District Court of the State of Wyoming on July 3, 1968. This judgment and decree was affirmed by the Supreme Court of the State of Wyoming on June 27, 1969 in Civil Actions 3721, 3706 and 3743. Petition for Rehearing was denied on September 29, 1969 by the Supreme Court of the State of Wyoming. The Supreme Court of the State of Wyoming returned its opinion and mandate on affirmance on October 22, 1969, to the District Court of the Seventh Judicial District of the State of Wyoming. The Supreme Court of the United States has jurisdiction to review the judgment and decree in question by Writ of Certiorari pursuant to Title 28, United States Code, Section 1257, Subsection 3, Where it is provided that the Supreme Court of the United States may review final judgments or decrees rendered by the highest Court of a State by Writ of Certiorari where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution of the United States or where any title, right, privilege or immunity is specially set up

or claimed under the Constitution, treaties or statutes of the United States.

Section C. The questions presented for review are as follows:

1. The defendants were denied the right to a jury trial in violation of the Constitution of the United States. Since Wyoming Statute, Section 6-254, provides for summary treatment of a criminal contempt proceeding, it provides a restriction of the defendants' right to a jury trial in a criminal contempt proceeding and is therefore contrary to this right guaranteed in the Constitution of the United States.

2. The Bill or Act providing the Statute under which this action is brought contains more than one subject in violation of Section 24, Article III of the Constitution of the State of Wyoming. Thus the defendants were denied the equal protection guaranteed by the Constitution of the United States since the statute did not comply with the general laws of the State of Wyoming. Moreover, the indictment and information in this case were worded in the disjunctive. Thus, the defendants were never aware of the specific charge against them. This restrained their ability to make an adequate defense in this case and severely limited their right to a fair trial.

3. The law in question is so vague, indefinite and uncertain and the inability to determine whether it provides a Civil or Criminal proceeding itself is an arbitrary exercise of power depriving the defendant of life, liberty and property without due process of law.

4. Wyoming Statute Section 6-253 provides for an assessment of a tax of $300.00 whenever a per-

manent injunction issues under section 6-248. Since the same property is also taxed under the regular means, the defendants here will be paying a double tax, contrary to the constitutional provision that all taxes should be regular and uniform, Article I, Section 8, United States Constitution.

5. The seizure of evidence in this case was illegal, and the defendants should have been allowed to have this evidence excluded in this quasi-criminal proceeding since Amendment IV, United States Constitution insures this right. Facts supporting this contention are enumerated in Argument 2 of Section F of this petition.

6. That this said action is in violation of the 5th amendment of the United States Constitution as applied to the states by the 14th amendment in that it is an exercise of absolute and arbitrary power over the life, liberty and property of the defendant in that he would be deprived of life, liberty and property without due process of law, contrary to the provisions of Amendment IV, United States Constitution.

Section D. The constitutional provisions, tready statutes, ordinances or regulations which the case involves are as follows:

> "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;" Wyoming Statutes 1957, Constitution of the United States, Article I, § 8, paragraph 1.
>
> "The right of the people to be secure in their persons, houses, papers, and effects, against unreas-

onable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Wyoming Statutes 1957, Constitution of the United States, Amendment IV.

" 'Nuisance" defined.—Whoever shall erect, establish, maintain, use, own or lease any building, erection or place used for the purpose of keeping, maintaining or storing therein intoxicating liquor in violation of law, or for the purpose of, directly or indirectly, or upon any pretense or by any device, manufacturing, selling, exchanging, bartering, dispensing, giving in consideration of the purchase of any property or for any services, or in evasion of law, or keeping for sale any intoxicating liquor, or owning, keeping or being in any way concerned, engaged or employed in owning or keeping any intoxicating liquor with intent to violate any law of this state, is guilty of a nuisance, and the building, erection, or place and the ground upon which said building, erection or place is situated which has been or is being used for any of the purposes herein mentioned, and the furniture, fixtures, musical instruments, gambling devices, and instruments of every kind or nature, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided." Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-247.

"Abatement by injunction; suit by county attorney or citizen; petition; temporary injunction; notice to defendant; issuance and effect of injunction.—Whenever a nuisance is kept, maintained

or exists as defined in this act (§§ 6-247 to 6-255), the county attorney or any citizen of the county may maintain an action in equity in the name of the State of Wyoming upon the relation of such county attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action, the court, or a judge in vacation shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony or otherwise, as the complainant may elect, unless the court or judge, by previous order, shall have directed the form and manner in which it shall be presented. Three days' notice in writing shall be given the defendant of the application, and if then continued at his instance, the writ as prayed shall be granted as a matter of course. When an injunction has been granted, it shall be binding on the defendant throughout the judicial district in which it was issued; and any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided." Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-248.

"Trial of issue; dismissal or prosecution; costs.—The action when brought shall be triable at the first term of court after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be admissable for the purpose of proving the ex-

istence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reason why the action should be dismissed, and the dismissal approved by the county attorney in writing or in open court. If the court is of the opinion that the action ought not (to) be dismissed, he may direct the county attorney to prosecute said action to judgment; and if the action is continued more than one term of court, any citizen of the county or the county attorney may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen." Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-249.

"Order of abatement; removal and sale of movable property; closing of building; breaking into closed building; fees for sale and closing premises. —If the existence of the nuisance be established in an action as provided in this act (§§ 6-247 to 6-255), or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property contained therein used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and effectual closing of the building or place against its use for purposes and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use

a building, or place so directed to be closed, he shall be punished as for contempt as provided in section 8 of this act (§ 6-254). For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court." Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-250.

"Disposition of proceeds of sale.—The proceeds of the sale of the personal property, as provided in section 4 (§ 6-250), shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the defendant." Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-251.

"Cancellation of closing order and release of property upon payment of costs and filing of bond; conditions of bond.—If the owner appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, or, in vacation, by the clerk and treasurer of the county, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation, the judge may, if satisfied of his good faith, order the premises closed under order of abatement cancelled so far as the same may relate to said property; and if the proceeding by an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building

and ground only. The release of the property under the provisions of this section shall not release it from any judgment, lien, or liability to which it may be subject by law." Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-252.

"Assessment of tax when permanent injunction issues; disposition.—Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against the owner or agent of any building kept or used for the purposes prohibited by this act (§§ 6-247 to 6-255) there shall be assessed against the said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of three hundred dollars. The assessment of said tax shall be made by the assessor of the county in which the nuisance exists and shall be made within three months from the date of granting of a permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the sheriff of the county and a return of said assesment shall be made to the county treasurer. Said tax may be enforced and collected in the manner prescribed for the collection of taxes under the general revenue laws and shall be a perpetual lien upon all property, both personal and real used for the purpose of maintaining said nuisance; and the payment of said tax shall not relieve the person or building from any other penalties provided by law and when collected shall be applied and distributed in the manner prescribed by law for the application and distribution of moneys arising from the collection of fines and penalties in criminal cases."

Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-253.

"Contempt proceedings for violation of injunction; penalties.—In case of the violation of any injunction granted under the provisions of this act (§§ 6-247 to 6-255), the court, or in vacation, a judge thereof may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both." Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-254.

"Penalties for maintaining public nuisance; 'public nuisance' defined.—Every house, building, tent, boat, wagon, automobile, or other vehicle or any other structure, situated in this state, used and occupied as a house of ill fame, or for purposes of prostitution or gambling, or for the purpose of keeping, maintaining or storing therein intoxicating liquor in violation of law, or for the purpose of, directly or indirectly, or upon any pretense or by any device, manufacturing, selling, exchanging, bartering, dispensing, giving in consideration of the purchase of any property or for any services, or in evasion of law, or keeping for

sale any intoxicating liquor, or owning, keeping or being in any way concerned, engaged or employed in owning or keeping any intoxicating liquor with intent to violate any law of this state, shall be held and deemed a public nuisance; and any person owning, or having the control of, as guardian, lessee or otherwise, such house, building, tent, boat, wagon, automobile, or other vehicle, or any other structure, and knowingly leasing or subletting the same, in whole or in part, for the purpose of keeping therein a house or place of ill fame, prostitution or gambling, or for the purpose of keeping, maintaining or storing therein intoxicating liquor in violation of law, or for the purpose of, directly or indirectly, or upon any pretense or by any device, manufacturing, selling, exchanging, bartering, dispensing, giving in consideration of the purchase of any property or for any services, or in evasion of law, or keeping for sale any intoxicating liquor, or owning, keeping or being in any way concerned, engaged or employed in owning or keeping any intoxicating liquor with intent to violate any law of this state, or knowingly permitting the same to be used or occupied for any such purpose, or using or occupying the same for any such purpose, shall for every such offense be fined in any sum not exceeding one hundred dollars or be imprisoned in the county jail not to exceed three months." Wyoming Statutes 1957, 1969 Cumulative Supplement § 6-255.

Wyoming Constitution
Article 3, § 24.

"Bill to contain only one subject, which shall be expressed in title.—No bill, except general approp-

riation bills and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject is embraced in any act which is not expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Section E. A brief statement of the case is as follows: A permanent injunction was issued by the District Court of Natrona County against the defendant, Leo Weiss, pursuant to the provisions of Sections 6-247 to 6-255, Wyoming Statutes 1957, 1969 Cumulative Supplement. The injunction enjoined Weiss, his agents, servants or employees from "maintaining, using or permitting to be used certain premises known as the Van Rooms for the purpose of illegal sale of liquor without a license or for the purpose of prostitution." In accordance with the provisions of Section 6-254 Wyoming Statute 1957, 1969 Cumulative Supplement, the county attorney of Natrona County brought subsequent proceedings charging Weiss with contempt of court for wilful violation of the Court's permanent injunction. In similar proceedings, Fifi Belondon was charged with aiding and assisting Weiss in maintaining and using the Van Rooms for the purpose of illegal sale of liquor without a license or for the purpose of prostitution. Both contempt matters were heard by the District Judge of Natrona County without a jury in a consolidated action. Both defendants were found guilty of contempt of court for violation of the Weiss injunction and were each fined $1,000.00 and sentenced to 90 days in jail, and a tax of $300.00 upon the premises was authorized. Both parties appealed to the Supreme Court of the State of Wyoming and the lower judgment was affirmed. They have both petitioned the Wyoming Supreme Court for a rehearing, but

rehearing has been denied in both cases. Evidence was admitted over objection in the District Court which had been obtained by a police officer pursuant to an arrest without a warrant. After the officer had arrested the defendants, a general search was made of the whole building, including rooms other than those in which the accused were present. No search warrant was ever issued in relation to this search. Objection to the admission of this evidence was made by oral argument at the trial court and appellate court. Requests were made continuously by the defendants that they be made certain of the charges against them and that the Court designate whether the procedure to be followed would be civil or criminal in these matters. The court, however, never made any attempt to clarify the charges or designate the procedure which was to be used in the trials. The defendant requested a jury trial at the District Court level but this was not allowed by the Court. The defendants objected to the provisions of Section 6-247 to 6-255, Wyoming Statutes 1957, 1969 Cumulative Supplement, at all stages in the proceedings in that they are unconstitutional for a variety of reasons.

Section F. The Writ of Certiorari should be allowed for the following reasons as provided in Rule 19 (1) (b) of the Rules of the Supreme Court which provides that a Writ of Certiorari may issue "when it appears that the highest court of a state has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision." The United States Supreme Court has provided guidelines in recent cases which States should follow in order that rights guaranteed in the Bill of Rights in the United States Constitution as extended to the States by the Fourteenth

Amendment will not be denied. The Writ should be granted since the State of Wyoming has failed to follow the guidelines set up by the United States Supreme Court in the course of trying these defendants.

1. As an indication, Wyoming Statutes Section 6-254 provides for summary treatment of a contempt arising from violation of any injunction granted under the provisions of Sections 6-247 to 6-255. It provides a punishment by fine of not less than $200.00 nor more than $1,000.00 or by imprisonment in the County Jail not less than three, nor more than six months, or by both, plus a tax of $300.00 upon the property to which the injunction pertains. Such contempt would be a criminal contempt. In the case of **Bloom vs. the State of Illinois,** 391 US 194, 20L. Ed 522, 88 S. Ct 1477, the United States Supreme Court held that prosecutions for serious criminal contempts are subject to the jury trial provisions of Article III, Section 2 of the Federal Constitution and of the Sixth Amendment which is made binding upon the States by virtue of the due process clause of the Fourteenth Amendment as indicated in **Duncan v. Louisiana,** 391 U.S. 145. In ordinary criminal prosecutions, the severity of the penalty authorized is the relevent criterion for determining whether the offense is petty or not. 18 USC, Section 1, defines a petty offense as "any misdemeanor, the penalty which does not exceed imprisonment for a period of six months or a fine of not more than $500.00 or both." The offense charged found in Wyoming Statutes, Section 6-254, 1969 Cumulative Supplement, dictates a fine with the maximum of $1,000.00 and imprisonment with the maximum of six months plus a tax of $300.00 under the rational of **Frank v. United States,** 23 L. Ed. 2d 162, 1969, this offense is one in which a fine can be imposed which exceeds that of the definition in 18 USC § 1.

2. In 5 ALR 3rd 670, 671, it is shown that the United States Supreme Court has indicated that actions civil in form but criminal in substance are to be treated as criminal for purposes of excluding illegally seized evidence. Thus the defendants in this case were entitled to have all illegally seized evidence excluded from the trial. All of the evidence seized in this case was seized without a warrant after an arrest of the defendants by a police officer without a warrant. After this arrest an extensive search was made of the whole building in which the defendants were arrested. This included a hallway and rooms in which the defendants were not present at the time they were arrested. Other evidence was taken to the police station including a locked set of dresser drawers. This dresser was forced open without the existence of any search warrant. Money and other articles found in this dresser were used against the defendants in the trial. Objections to the admission of this evidence were made at all stages in the proceedings. Under the language of **Chimel v. California,** US (6/23/69), police after making a valid arrest of a suspect in his home or office may conduct a warrantless search for weapons and destructive evidence only into the area immediately within the suspect's reach. Any further search must be either consented to or authorized by warrant, in order to be valid. Thus the search in question was invalid since it was not made under a search warrant and was clearly outside the scope of searches incident to a lawful arrest as defined by the **Chimel** case. In none of the proceedings has the State alleged that there was any consent given with respect to any of the searches made. Items allowed into evidence were seized from areas so remote from the place of arrest that they would not even meet pre-**Chimel** standards as displayed

in **US v. Rabinowitz, 339** US 56, and **Harris v. US,** 331 US 145.

3. Broadly speaking, due process of law is a guarantee to prevent governmental encroachment and to secure to all persons equal and impartial justice and the benefit of the general law, due process of law being frequently spoken of as including equal protection of the laws which is secured by laws operating for all alike. 16 CJS, Constitutional Law, Section 569. The concept of due process is to protect individuals from inconsistent legislation. The act under which the defendant was charged is a prime example of inconsistent legislation which should be determined by this Court to be so inconsistent with the general laws of the land as to be unconstitutional. Article III, Section 24 of the Wyoming Constitution requires that a Bill contain only one subject which is to be expressed in its title. The purpose of this Bill is to prevent fraud in surprise of legislation. 71 Wyo. 1, Nevertheless Chapter 66, SL of Wyoming 1963 is entitled "Public Nuisance Abatement". Under this very general heading fall the subjects of gambling, keeping, selling or manufacturing liquor illegally, prostitution, lewdness and assignation. These subjects are nowhere mentioned in the title to the Bill. This public nuisance statute should be found to be unconstitutional since surprise and fraud in legislation has not been avoided in this instance. Legislation covering such subjects must be consistent with legislation concerning other subjects or be ruled to be unconstitutional. In other words due process would require the Article III Section 24 of the Wyoming Constitution be applied everywhere equally with regard to every title and every subject.

4. There are several matters in the proceedings which make it impossible for the defendants to

provide an adequate defense to the charges. The information in this case leaves it uncertain what is relied upon as the accusation against the defendant. The information and the warrant are both charged in the disjunctive, thus hampering an effective preparation for defense. The general rule is well settled that an indictment or information must not charge a person disjunctively in such a manner to leave it uncertain as to the accusation against him. 42 CJS Indictment and Information, Section 139(b). Evidence of how the error is compounded is found in that the Supreme Court in its opinion on page 2 stated that Fifi Belondon was charged with maintaining and using the Van Rooms for the purpose of illegal sale of liquor without a license or for the purpose of prostitution. Even at the Supreme Court level no one really knows exactly for what the defendants were charged and convicted. The information and warrant which were issued against the appellent-defendant should therefore be ruled by this Court as invalid based upon the reasoning handed down in the following cases: **Kitchens v. United States,** 272 Fed 2d. 761, **State v. Williams,** 185 S.E. 661, **Espinoza v. The People,** 349 P. 2d 689. Another matter hampering an effective defense against charges made under the public nuisance statute is that the Court in none of the proceedings made a determination on the question whether the proceedings are criminal or civil, even though the defendants requested at all stages that they do so. The reason for the confusion is the fact that throughout the statute found in Wyoming Statutes, 1957, Section 6-247 to 6-255, it is worded and treated as being civil. Yet, all of the actions which are to be taken by the County attorney are criminal by nature. There is to be an indictment filed under Statute Section 6-249. The money which is brought in if a violation of the Statute is found to exist is

placed in the school board fund as all other criminal fines. Section 6-253. There is provided in 6-254 and Section 6-255 for a criminal penalty. There is cited in 6-253 a required taxation for any violators of the statute. All these factors are criminal and not civil so therefore, the proper procedure to be utilized should have been determined in order that compliance with the rights of all accused would be protected under the statute.

5. The defendants have exhausted their remedies in the Courts available to them in the State of Wyoming and these Courts have constantly decided important questions of federal law in a way in conflict with applicable decisions of this Court and have so far departed from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's power of supervision. The Writ of Certiorari should issue in order that rights guaranteed under the Constitution of the United States will be assured to these defendants.

Respectfully submitted

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IN THE SUPREME COURT, STATE OF WYOMING
APRIL TERM, A.D. 1969
JUNE 27, 1969

LEO WEISS, Appellant (Defendant below), v. STATE OF WYOMING, on the relation of G. JOSEPH CARDINE, County and Prosecuting Attorney, Natrona County, Wyoming, Appellee (Plaintiff below).	)	No. 3721
FIFI BELONDON, Appellant (a Defendant below), v. STATE OF WYOMING, on the relation of G. JOSEPH CARDINE, County and Prosecuting Attorney, Natrona County, Wyoming, Appellee (Plaintiff below).	)	No. 3743

Appeals from the District Court of Natrona County, Wyoming; in Case No. 3721, the Honorable T. C. Daniels, Judge; and in Case No. 3743, the Honorable R. M. Forrister, Judge.

Raymond B. Whitaker and Charles S. Aspinwall, Casper, for appellants.

James E. Barrett, Attorney General, State of Wyoming; Jack Speight, Assistant Attorney General, State of Wyoming, Cheyenne; and G. Joseph Cardine, Natrona County Attorney, Casper, for appellee.

Before GRAY, C. J., and McINTYRE, PARKER, and McEWAN, J. J.

Mr. Justice McINTYRE delivered the opinion of the court.

Proceedings initiated by the County Attorney of Natrona County against Leo Weiss, pursuant to the provisions of §§ 6-247 to 6-255, W.S. 1957, 1967 Cum. Supp., resulted in the issuance of a permanent injunction by the district court of Natrona County. The injunction enjoined Weiss, his agents, servants or employees, from maintaining, using or permitting to be used certain premises known as the Van Rooms for the purpose of illegal sale of liquor without a license or for the purpose of prostitution.

Subsequent proceedings brought by the county attorney in accordance with the provisions of § 6-254, W.S. 1957, 1967 Cum. Supp., charged Weiss with contempt of court for willful violation of the court's permanent injunction. The contempt matter was heard by the district judge without a jury; Weiss was found guilty of deliberately and knowingly violating the injunction; and he was fined $1,000 and sentenced to 90

days in jail. The matter is before us, in Case No. 3721, on his appeal from the order of punishment for contempt.

In separate proceedings Fifi Belondon was charged with aiding and assisting Weiss in maintaining and using the Van Rooms for the purpose of illegal sale of liquor without a license or for the purpose of prostitution. She was found guilty of contempt of court for violation of the Weiss injunction and was fined $1,000 and sentenced to 90 days in jail. She has appealed, in Case No. 3743, from the judgment and sentence against her.

The Weiss Case

We will deal with the appeal of Weiss first, and in doing so we will consider in order the points relied on by him for reversal. These points are:

1. That the act pertaining to nuisances, under which he was enjoined and punished, is unconstitutional because the original bill for such act contained more than one subject contrary to Art. 3 § 24, Constitution of Wyoming.

2. That defendant was deprived of a jury trial in violation of Art. 1, § 9, Constitution of Wyoming.

3. That the action against defendant was arbitrary and without due process of law in violation of Art. 1, §§ 6 and 7, Constitution of Wyoming.

4. That there was a lack of due process of law because defendant was denied rights of discovery and was not given proper notice or time for a defense or jury trial.

Point 1. The act we are concerned with was adopted as Ch. 66, S.L. of Wyoming, 1963. It was Original House Bill No. 158. In the 1963 Session Laws, the act has been given the general heading or title by the compilers of "Public Nuisance Abatement." The title as given in the act is this:

> "AN ACT relating to the abatement of public nuisances; defining those activities which constitute public nuisances; providing for their abatement by injunction; providing a penalty for violation of an injunction and for conducting a nuisance; and repealing Sections 6-107 and 7-453 through 7-460, Wyoming Statutes, 1957, relating to abatement of nuisances."

Appellant claims the act deals with gambling, keeping or selling liquor illegally, and prostitution, all of which are different subjects.

We have made it clear in previous decisions that Art. 3, § 24, of our state constitution was not intended to prevent the incorporation into a single act of the entire statutory law upon one general subject, but only that every provision must be germane to the subject expressed in the title. **Board of Com'rs of Laramie County v. Stone,** 7 Wyo. 280, 51 P. 605-607; **State v. City of Laramie,** Wyo., 437 P. 2d 295, 303; **Public Service Commission of Wyoming v. Grimshaw,** 49 Wyo. 158, 53 P. 2d 1, 11, 109 A.L.R. 534.

The one general subject involved in Ch. 66, S.L. of Wyoming 1963, is the abatement of public nuisances; and the title to the act so states.

We have frequently held the purpose of the constitutional provision that no bill shall be passed con-

taining more than one subject, which shall be clearly expressed in its title, is to prevent surprise or fraud in legislation; and all that is necessary for compliance with such constitutional provision is reasonble adherence thereto. **Morrow v. Diefenderfer,** Wyo., 384 P. 2d 601, 603; **Smith v. Hansen,** Wyo., 386 P. 2d 98, 101; and **Brinegar v. Clark,** Wyo., 371 P. 2d 62, 66.

Appellant's point 1 is without merit.

Point 2. Concerning defendant's complaint that he was deprived of a jury trial in the contempt proceedings, we are reminded that Art. 1, § 9, Wyoming Constitution, provides the right of trial by jury shall remain inviolate in "criminal cases." The question therefore is whether proceedings against the defendant in connection with the citation for contempt was a "criminal case" within the meaning of that term as used in Art. 1, § 9.

Appellant cites no authority for his contention on point 2. In his brief he makes this single statement in support of the point: "Defendant was not granted a jury trial and did not waive the same." On the other hand, counsel for the State asserts encyclopedic and case law is clear on the point that contempt proceedings are equitable in nature, and that the parties involved are not entitled as a matter of common law or constitutional law to a jury.

In support of the State's assertion, counsel calls attention to the fact that our court, in **Tucker v. State,** 35 Wyo. 430, 251 P. 460, 464, quoted with approval from a Missouri case to this effect:

> "It is settled law that every constitutional court of common-law jurisdiction has the inherent power to punish for contempt. * * *

> It is settled law that contempt cases are sui generis, * * * that contempt proceedings are summary, that there is no constitutional right to trial by jury * * * ."

In **People v. One 1941 Chevrolet Coupe,** 37 Cal. 2d 283, 231 P. 2d 832, 843, the California supreme court said the right of trial by jury did not exist at common law in a suit to abate a public nuisance. Hence it is not a constitutional right now.

Also, the Oklahoma supreme court, in **Goodall v. City of Clinton,** 196 Okl. 10, 161 P. 2d 1011, 1013, held an abatement case, being an injunction case is one of equitable cognizance and the parties are not entitled to a jury trial as a matter of right.

With respect to the contempt proceeding, even though such proceeding was to punish for violation of the injunction it was part of the original suit, and it is well to remember that such proceeding is summary in nature and sui generis in character. **Frey v. Willey,** 161 Kan. 196, 166 P. 2d 659, 662. See also § 6-254, W.S. 1957, 1967 Cum. Supp., which authorizes the court, in case of a violation of the injunction, to "summarily" try and punish the offender.

Appellant presents no authority for the claim that he is entitled to a trial by jury on contempt citation. We are not unaware of recent holdings by the United States Supreme Court indicating a right to a jury trial on contempt citations under certain circumstances, but such decisions have no application to the instant case.[1]

Point 3. Concerning point 3 raised by the Weiss appeal, we realize § 6 of Art. 1 of the Wyoming Con-

[1] See **Bloom v. State of Illinois,** 391 U. S. 194, 88 S. Ct. 1477, 20 L. Ed. 2d 522; and **DeStefano v. Woods,** 392 U. S. 631, 88 S. Ct. 2093, 20 L. Ed. 1308.

stitution specifies that no person shall be deprived of life, liberty or property without due process of law; and § 7 of such article states absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic. We are at a loss, however, to know how it can be claimed either section was violated in the proceedings against Weiss.

The only argument made by counsel for appellant under this point is: "To deprive a defendant of a jury trial, to cloud the title to his real estate and thereby deprive him of the use of his property is without authority and strictly prohibited by the Bill of Rights."

We have held over and over again that a law will not be construed to be unconstitutional unless its unconstitutionality is clear and beyond a reasonable doubt; and the party who assails the validity of such law has the burden of proving his contention. **Kuntz v. Kinne,** Wyo., 395 P. 2d 286, 288-289; **Bell v. Gray,** Wyo., 377 P. 2d 924, 925-926; **Bulova Watch Company v. Zale Jewelry Company of Cheyenne,** Wyo., 371 P. 2d 409, 417; **Brinegar v. Clark,** Wyo., 371 P. 2d 62, 64.

This rule is clearly applicable as far as Weiss' point 3 is concerned. He has made no showing that either § 6 or § 7 of Art. 1 has been violated by proceedings brought pursuant to the authority contained in Ch. 66, S.L. of Wyoming, 1963, and we do not accept his contention in that regard.

Point 4. Our answer to the claim made for Weiss in point 3 is equally applicable to the claim made in his behalf in point 4.

The record before us shows that all rules of procedure were properly followed, insofar as anything called to our attention is concerned. In particular, we

find nothing in the record to indicate Weiss was denied any rights of discovery; and he was afforded ample and proper notice of all proceedings against him. He was also afforded ample and proper time for defense at every stage of the proceedings—all according to applicable rules and statutory provisions. He calls nothing in the record to our attention which indicates otherwise.

He was not, it is true, given a jury trial. We have already disposed of that complaint.

We find no merit in any of the points relied on by Weiss for reversal. Therefore, the judgment of contempt against him and the order of punishment therefor are to be affirmed.

The Belondon Case

Fifi Belondon was not a party to the injunction action brought against Weiss. She was not charged, in the contempt action against her, as an agent or employee of Weiss. Instead, she was charged with having been served with a copy of the injunction and having knowledge of it; and with thereafter assisting Weiss in maintaining and using the Van Rooms for the purpose of illegal sale of liquor without a license or for the purpose of prostitution. She was also charged with generally participating in the operation of the business and establishment.

Although her attorney has not argued that she cannot be punished for contempt for violation of the Weiss injunction, we think we should mention the general rule stated in 43 C.J.S. Injunctions § 263, p. 1012. It is to the effect that all persons who aid and abet parties to the suit, against whom an injunction has

been rendered, in disobeying it, or who conspire with them for its violation, are guilty of a contempt of court if they have actual knowledge of the injunction, although not themselves parties to the suit or named in the order granting the injunction.

For cases which recognize and follow this general rule, see **Lyle v. Haskins,** 24 Wash. 2d 883, 168 P. 2d 797, 89; **Gholson v. Wilmoth,** Tex. Civ. App., 225 SW. 2d 605, 608; and **State ex rel. Cannery Workers & Farm Laborers Union Local 7 v. Superior Court of King County,** 30 Wash. 2d 697, 193 P. 2d 362, 364.

The points relied on for reversal in the Belondon case are generally the same points asserted in the Weiss case. Primary emphasis is placed on the complaint that defendant was denied a trial by jury.

These matters being already fully discussed in this opinion, in connection with the Weiss case, we will simply say the answers are the same. That includes of course what has already been said concerning a jury trial.

The only new or different statement made in the Belondon points is to the effect that the public nuisance abatement act we are dealing with is unconstitutional because it provides for the assessment of a tax which destroys the uniformity of taxation in Wyoming. The record does not indicate, however, that any tax has been assessed against Belondon or the Van Rooms in connection with these proceedings.

In any event, what we have said in considering the Weiss point 3 applies to the matter concerning the assessment of a tax. As we pointed out in the Weiss point 3 discussion, a law will not be held to be unconstitutional unless its unconstitutionality is clear and

beyond reasonable doubt. No effort has been made on behalf of appellant-Belondon to suggest any reasons or authority for saying the assessment provision renders the act unconstitutional.

We have not been made aware of any denial of due process as far as defendant-Belondon is concerned; and no reversible or prejudicial error concerning her has been called to our attention. The judgment of contempt entered against her and the order of punishment should therefore be affirmed.

Both Case No. 3721 and Case No. 3743 are affirmed.

H. Judgment or Decree

IN THE DISTRICT COURT

SEVENTH JUDICIAL DISTRICT

CIVIL ACTION NO. 30604

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

STATE OF WYOMING, on the relation of G. JOSEPH CARDINE, County and Prosecuting Attorney, Natrona County, Wyoming,

Plaintiff,

vs.

LEO WEISS,

Defendant.

JUDGMENT AND DECREE

THIS MATTER coming on for hearing upon an Order setting it for trial to the Court at the hour of 10:00 A.M. on the 4th day of March, 1968, the Plaintiff and Defendant being personally in Court and represented by their Counsel of Record, the Court proceeded to the taking of testimony on behalf of Plaintiff, the Defendant having elected not to testify or present evidence in his own behalf and having heard the argument of Counsel and being informed in the premises finds:

1. That the Plaintiff has established to the satisfaction of the Court that those premises described in the petition for abatement heretofore filed herein and more particularly described as follows:

> Lots 17 and the East 12½ Feet of Lot 18, Block 3, Midwest Addition to the City of Casper, Natrona County, Wyoming, also known as 218 West "B" Street also known as the Van Rooms

has been used by the Defendant for the purpose of prostitution and illegal sale of liquor without a license so to do in violation of Section 6-247, Wyoming Statutes 1957 and such premises constitute a nuisance as defined in said Statute.

2. That the Plaintiff has established to the satisfaction of the Court that the Defendant, being the owner of the premises known as the Van Rooms, on or about February 1, 1968 did violate that Temporary Injunction of this Court dated January 12, 1968 by permitting acts of prostitution and the illegal sale of liquor without a license to occur in and upon those premises hereinabove described on said date, and by using said premises for such purpose.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Defendant Leo Weiss, his agents, servants or employees be, and they are hereby permanently enjoined from maintaining, using or permitting to be used, those premises known as the Van Rooms and more particularly described as follows:

> Lots 17 and the East 12½ Feet of Lot 18, Block 3, Midwest Addition to the City of Casper, Natrona County, Wyoming, also known as 218 West "B" Street, also known as the Van Rooms

for the purpose of illegal sale of liquor or the sale of liquor without a license from the appropriate authority or for the purpose of prostitution, either directly or indirectly by subterfuge or other device.

2. That the premises known as the Van Rooms and more particularly described as follows, to wit:

> Lots 17 and the East 12½ Feet of Lot 18, Block 3, Midwest Addition to the City of Casper, Natrona County, Wyoming, also known as 218 West "B" Street, also known as the Van Rooms

be, and they are hereby abated and such premises shall not be used for the purpose of illegal sale of liquor or the sale of liquor without a license from the appropriate licensing authority or for the purpose of prostitution for a period of one year from the date of entry of this Judgment unless sooner released in accordance with the provisions of Section 6-252, Wyoming Statutes 1957.

3. That the Sheriff of Natrona County, Wyoming

shall forthwith make an inventory and appraisement of all fixtures, furniture, musical instruments or movable property contained in the premises known as the Van Rooms and more particularly described as follows, to wit:

> Lots 17 and the East 12½ Feet of Lot 18, Block 3, Midwest Addition to the City of Casper, Natrona County, Wyoming, also known as 218 West "B" Street, also known as the Van Rooms

and such inventory and appraisement shall be filed in this cause immediately upon completion of same. That the said Sheriff of Natrona County, Wyoming shall thereafter sell said fixtures, furniture, musical instruments or movable property in the manner provided for the sale of chattels under execution and in accordance with the provisions of Section 6-250, Wyoming Statutes 1957.

4. The County Assessor of Natrona County, Wyoming may, as provided in Section 6-253, Wyoming Statutes 1957, assess a tax against said premises, to wit:

> Lots 17 and the East 12½ Feet of Lot 18, Block 3, Midwest Addition to the City of Casper, Natrona County, Wyoming, also known as 218 West "B" Street, also known as the Van Rooms.

5. That Defendant Leo Weiss did violate the Temporary Injunction issued by the above entitled Court January 12, 1968 as specifically set forth in Order entered in this cause the 14th day of February, 1968 and Defendant is hereby fined the sum of Five Hundred Dollars ($500.00) and remanded to the custo-

dy of the Sheriff of Natrona County, Wyoming to serve a sentence of ninety (90) days in the County Jail of said County.

Done in open Court this 8 day of March, 1968.

T. C. Daniels
District Judge

IN THE DISTRICT COURT OF NATRONA COUNTY, WYOMING
SEVENTH JUDICIAL DISTRICT
CIVIL ACTION NO. 30,604

STATE OF WYOMING, on the relation of G. JOSEPH CARDINE, & Prosecuting Attorney, Natrona County, Wyoming,

Plaintiff,

v.

LEO WEISS,

Defendant.

ORDER

THIS MATTER came before the Court for hearing as to Leo Weiss separately the 2nd day of April, 1968, at 10:00 a.m., upon Information and Warrant charging defendant, Leo Weiss, with contempt of the above-entitled Court for violation of Judgment & Decree of this Court entered and filed herein March 8, 1968: the State of Wyoming being represented by its attorneys, G. J. Cardine and Hugh M. Duncan, and defendant, Leo Weiss, being represented by his attorneys, Raymond B. Whitaker and Charles Aspinwall, and the parties having announced their readiness, the Court proceeded to a trial in this contempt matter, and having heard the evidence adduced by and in behalf of

the respective parties, the arguments of counsel, having examined the records and files herein, and being fully advised, FINDS generally in favor of plaintiff and against the defendant, Leo Weiss, and FINDS that said defendant is guilty of deliberate, flagrant, knowing violation of the Order of the above-entitled Court of March 8, 1968, and the Court does also rule that the Information filed in this cause charging such contempt is sufficient for purposes of this action.

WHEREFORE, IT IS HEREBY ORDERED that defendant, Leo Weiss, is guilty of contempt of this Court for violations of Judgment & Decree of this Court dated and filed herein March 8, 1968, and said defendant is hereby fined the sum of One Thousand ($1,000.00) Dollars and is sentenced to serve a term of ninety (90) days in the County Jail for Natrona County, Wyoming, and he is hereby remanded to the custody of the Sheriff of Natrona County, Wyoming, to serve the sentence imposed herein; provided that, if the defendant shall desire to contact the undersigned Judge concerning his sentence, and makes adequate assurances to this Court as to his future conduct, the Court will consider suspending such sentence on such terms as are just.

IT IS FURTHER ORDERED that the Informations filed in this cause against the defendant, Leo Weiss, are sufficient for purposes of this action, and any motions defendant may have made with respect to such Informations are hereby overruled.

DONE IN OPEN COURT this 5th day of April, 1968.

BY THE COURT:

T. C. Daniels
Judge

Approved as to form:

Attorney for Plaintiff

Attorney for Defendant

IN THE DISTRICT COURT OF NATRONA COUNTY, WYOMING

SEVENTH JUDICIAL DISTRICT

CIVIL ACTION NO. 30,604

STATE OF WYOMING, on the relation of G. JOSEPH CARDINE, County & Prosecuting Attorney, Natrona County, Wyoming,

Plaintiff,

vs.

LEO WEISS,

Defendant.

ORDER

THIS MATTER came before the Court for hearing as to Fifi Belondon separately the 3rd day of July, 1968, at 10:00 a.m., upon Information and Warrant charging Fifi Belondon with contempt of the above-entitled Court for violation of Judgment and Decree of this Court entered and filed herein March 8, 1968; the State of Wyoming being represented by its attorney, G. J. Cardine and Hugh M. Duncan, Fifi Belondon being represented by her attorney, Frank Bowron, and the parties having announced their readiness, the Court proceeded to a trial in this contempt matter, and having heard the evidence adduced by and in behalf of the respective parties, the arguments of counsel,

having examined the records and files herein, and being fully advised, FINDS generally in favor of plaintiff and against Fifi Belondon, and FINDS that Fifi Belondon is guilty of deliberate, flagrant, knowing violation of the Order of the above-entitled Court on March 8, 1968, and that Fifi Belondon is guilty of contempt of the above-entitled Court.

WHEREFORE, IT IS HEREBY ORDERED that Fifi Belondon is guilty of contempt of this Court for violations of Judgment and Decree of this Court dated and filed herein March 8, 1968, and said Fifi Belondon is hereby fined the sum of One Thousand ($1,000.00) Dollars and is sentenced to serve a term of ninety (90) days in the County Jail for Natrona County, Wyoming, and she is hereby remanded to the custody of the Sheriff of Natrona County, Wyoming, to serve the sentence imposed herein.

DONE IN OPEN COURT this 3rd day of July, 1968.

BY THE COURT:

R. M. Forrister
Judge

FILE COPY

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

No. 1127

LEO WEISS, *Petitioner*

v.

STATE OF WYOMING, *ex. rel.*
G. JOSEPH CARDINE, *Respondent*

BRIEF FOR RESPONDENT IN OPPOSITION FOR AN APPLICATION FOR A WRIT OF CERTIORARI

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	4
Constitutional and Statutory Provisions Involved	5
Statement of Case	5
Reasons for Denying the Writ	9

CASES CITED

Adler v. Board of Education,
342 U.S. 485, 496 (1951) 3

Beck v. Washington,
369 U.S. 541, 549 (1962) 2

Chimel v. California,
U.S. No. 770 (6-23-69) 3, 4

Lujan v. State,
423 P.2d 388, 390 (Wyo. 1967) 4

Valerio v. State,
429, P.2d 317, 319 (Wyo. 1967) 4

Weiss v. State
435 P.2d 280, 281 (Wyo. 1967) 7

Whitney v. California,
274 U.S. 356, 363 (1926) 3

OTHER AUTHORITIES

Supreme Court Practice, 4th Edition,
Stern & Gressman 2, 3

Title 28 U.S.C., Sec. 1257 1

IN THE
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LEO WEISS, *Petitioner*
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STATE OF WYOMING, *ex. rel*
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BRIEF FOR RESPONDENT IN OPPOSITION FOR AN APPLICATION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Wyoming Supreme Court which is the basis for the Application for the Writ of Certiorari is reproduced in its entirety beginning at page 19 of Petitioner's Brief.

JURISDICTION

The jurisdictional requisites relied upon by Petitioner are set forth in his Brief appearing at page 2. Specific reference is made to Title 28, United States Code, Section 1257, subsection 3, which specifically states that the Supreme Court of the United States may review final judgment or decisions rendered by the highest court of the state by Writ of Certiorari. It is the Respondent's position that the six issues presented to this Court for review, found in Section C commencing at page 3 of Petitioner's Brief, are not of such a nature as to lend themselves to review by the United States Supreme Court pursuant to Title 28,

Section 1257, subsection 3. Specifically, issues C(1), C(2), C(3), C(4), and C(6) are issues that were specifically reviewed by the Wyoming Supreme Court and decided upon non-federal grounds. Because of this, they are not subject to review by this Court at this time. (See *Beck v. Washington,* 369 U.S. 541, 549 (1962), also *Supreme Court Practice,* 4th Edition, Stern & Gressman, Section 3.25 *et seq.,* p. 116). Each of the following issues presented to the Wyoming court were reviewed and decided solely on non-federal grounds in light of the Wyoming Constitution.

I.

SECTION 6-247, *et seq.,* WYOMING STATUTES 1957 (CUM. SUPP. 1967) CONTAIN MORE THAN ONE SUBJECT AND ARE IN VIOLATION OF SECTION 24, ARTICLE 3, CONSTITUTION OF THE STATE OF WYOMING.

II.

THE APPELLANT IS GUARANTEED UNDER THE TERMS OF THE WYOMING STATE CONSTITUTION A JURY TRIAL IN A CONTEMPT PROCEEDING INITIATED PURSUANT TO SECTION 6-254, WYOMING STATUTES 1957 (CUM. SUPP. 1967).

III.

A CONTEMPT PROCEEDING INITIATED PURSUANT TO SECTION 6-254, WYOMING STATUTES 1957 (CUM.

SUPP. 1967), DOES VIOLATE THE TERMS AND PROVISIONS OF SECTIONS 6 AND 7, ARTICLE 1, CONSTITUTION OF THE STATE OF WYOMING, IN THAT THE APPELLANT WAS DENIED LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW, AND THERE WAS MANIFESTED ABSOLUTE AND ARBITRARY POWER OVER THE LIFE, LIBERTY OR PROPERTY OF APPELLANT.

IV.

THE APPELLANT WAS DENIED HIS RIGHT OF DISCOVERY OR OTHER APPROPRIATE PROCEDURES IN THE CONTEMPT PROCEEDINGS, FURTHER HE WAS DENIED PROPER NOTICE OF HEARING AND ALSO WAS DENIED LIFE, LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF THE LAW.

It is clear from these arguments presented to the Wyoming Supreme Court, when read in conjunction with its opinion (Petitioner's Brief, p. 19), that each is non-federal in nature and is not subject to review by this Court in a Certiorari petition.

In analyzing issue C(5), which deals with the seizure of evidence based upon the holding of *Chimel v. California,* U.S. No. 770 (6-23-69), it is the Respondent's position that the highest court in the state must consider the specific federal question prior to consider-

ation by the United States Supreme Court. *Adler v. Board of Education,* 342 U.S. 485, 496 (1951) and *Whitney v. California,* 274 U.S. 356, 363 (1926). (See also *Supreme Court Practice,* 4th Edition, Stern & Gressman, Section 3.30, p. 131.)

This search and seizure question raised in light of *Chimel* was not properly presented to the Wyoming Supreme Court for review even though raised at the trial court level. Not having had an opportunity to review the record filed with this court, the state is at a handicap to determine whether or not the Briefs of the Petitioner and Respondent which were presented to the Wyoming Supreme Court have been incorporated for the Court's review; however, these Briefs clearly indicate that this search and seizure question now urged upon this Court was not presented to the Wyoming court for review. Based upon the Wyoming cases of *Valerio v. State,* 429 P.2d 317, 319 (Wyo. 1967) and *Lujan v. State,* 423 P.2d 388, 390 (Wyo. 1967), it is clear that issues raised at the trial level will not be reviewed by the Wyoming Supreme Court unless briefed and argued by counsel.

Further, it is the Respondent's position that since *Chimel* has not been held retroactive by this Court, it has no application in this case since the questioned arrest and search are pre-Chimel in nature, occurring in December of 1967.

QUESTIONS PRESENTED

The questions presented for consideration by this Court in contemplation of the issuance of the Writ of Certiorari are stated at pages 3 and 4 of Petitioner's Brief. It is clear in reading these statements in con-

nection with the Wyoming Supreme Court decision appearing at page 19 of the Petitioner's Brief that the grounds for issuance of the Writ do not have merit in that they are not properly reviewable issues presented to this Court as set out in the Respondent's Jurisdictional claims.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Respondent is somewhat at a loss to state with certainty as to whether or not the proper and pertinent United States Constitutional citations have been incorporated in the Petitioner's Brief.

STATEMENT OF CASE

The Petitioner's Statement of Case is found in Section E commencing at page 12 of his Brief. It is the Respondent's feeling that the Court needs additional facts upon which to better analyze the proceedings that are now before this Court for review. Therefore, in fairness to the Court, the following chronological facts, times and record references are set forth. It is noted that the record citations referred to relate to page numbers that were used in the record presented to the Wyoming Supreme Court for its review.

1. This case is an appeal from a contempt order issued by the Wyoming District Court of the Seventh Judicial District on April 5, 1968 (R. 181). A contempt proceeding heard before the court April 2, 1968 (R. 400 *et seq.*) arose from a deliberate violation of an injunction entered by the court on March 8, 1968 (R. 56).

2. Prior to entering the injunction which Petitioner violated, the County and Prosecuting Attorney

for Natrona County, Wyoming, under oath, filed a Petition for Order of Abatement against Petitioner on December 18, 1967 (R. 4). This proceeding was initiated under the provisions of Sections 6-247 through 6-255, Wyoming Statutes 1957 (Cum. Supp. 1967). In the Petition for Order of Abatement, it is alleged that the Petitioner, who is the record title owner of certain described property, had maintained, used and occupied such premises for the purposes of prostitution and illegal sale of intoxicating liquor. Such activities constitute a nuisance under the terms of the statute and should be enjoined (R. 4).

3. Summons and Petition for Abatement were served upon Petitioner (R. 7) pursuant to the Wyoming Supreme Court holding in *Weiss v. State*, (Wyo.) 435 P.2d 280, 281 (1967). A hearing was held and a temporary injunction was issued January 12, 1968 (R. 27) enjoining the Petitioner from maintaining a house of prostitution and selling liquor without a license on the particularly-described premises. Such injunction was served upon Petitioner January 12, 1968 (R. 28).

4. An untimely answer was filed by Petitioner on January 15, 1968 (R. 32), and due to such untimely filing of the answer, the Clerk of the District Court entered a default on January 16, 1968 (R. 31).

5. This entry of default was set aside by order of the court upon good cause shown on January 29, 1968 (R. 43).

6. A Proceedings by Information alleging violation of the temporary injunction by Petitioner was filed February 2, 1968 (R. 44). Based upon the Pro-

ceedings by Information, a warrant for the arrest of Petitioner was issued February 2, 1968 (R. 48).

7. After hearing in open court on February 14, 1968, the court found the Petitioner guilty of violation of the temporary injunction issued January 12, 1968 (R. 53-54). As a result, Judgment and Decree was rendered on March 8, 1968, finding the Petitioner in contempt for violating the temporary injunction in that he did, subsequent to the injunction, maintain and use the certain described premises for the illegal sale of liquor without a license or for the purpose of prostitution. The Petitioner was further enjoined from maintaining, using or permitting to be used the described premises for the illegal sale of liquor without a license, or for the purpose of prostitution, either directly or indirectly. (R. 56, 57, 58)

8. Based upon this Judgment and Decree, the Petitioner filed Notice of Appeal to the Wyoming Supreme Court on March 8, 1968 (R. 60).

9. By order of the Wyoming Supreme Court on September 20, 1968, the Appeal filed was dismissed (Case File No. 3706).

10. A second Proceedings by Information was filed by the County and Prosecuting Attorney on March 11, 1968 (R. 64) alleging the Petitioner had violated the terms and conditions of the Judgment and Decree entered by the court on March 8, 1968. Service was made upon Petitioner on March 11, 1968 (R. 86).

11. An Amended Proceedings by Information was filed before the court against Petitioner on March 21, 1968 (R. 141, 142, 143) and the Amended Proceedings

by Information was served on March 22, 1968 (R. 156).

12. A contempt trial was held before the court on April 2, 1968 (R. 400 *et seq.*) based on the alleged contempt by Petitioner of the injunction issued by the court. The court found, on April 5, 1968 (R. 181, 182), that Petitioner had *deliberately, flagrantly,* and *knowingly* violated the injunction of the court on March 8, 1968, and the court ruled that Petitioner be fined the sum of $1,000 and sentenced to a term of 90 days; and further, that the Information filed in the case against Petitioner was sufficient for the purpose of the action; and that any motions Petitioner may have made with respect to such Information were overruled.

13. As a result of the contempt finding, the Petitioner filed a Notice of Appeal with the Wyoming Supreme Court on April 8, 1968 (R. 186).

14. As a result of the Notice of Appeal filed with the Wyoming Supreme Court, the court issued a decision on June 29, 1969, which is found at page 19 of Petitioner's Brief.

15. The basis of the Petition for Certiorari before this Court is an outgrowth of decision of the Wyoming Supreme Court upholding the contempt order of the District Court.

16. Petitioner then filed a petition for rehearing before the Wyoming Supreme Court, which petition was denied on September 19, 1969.

17. The Wyoming Supreme Court opinion and mandate were returned to the Wyoming District Court on October 22, 1969.

18. Pursuant to Rule 22, Rules of the United States Supreme Court, the Petitioner had ninety days or up to January 20, 1970, to file appropriate petition, record and brief with this Court to invoke its jurisdiction. However, on the ninety-first day, January 21, 1970, Associate Justice White entered an order extending time in which to do so for the benefit of Petitioner to February 4, 1970.

REASONS FOR DENYING THE WRIT

Contrary to Petitioner's statement that the Writ should be allowed pursuant to Rule 19 of the Rules of the United States Supreme Court, it does not appear that the highest court of the State of Wyoming has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's powers of supervision. It is clear in this case that the state Supreme Court decision was based on non-federal grounds and that such grounds are adequate to support the court's decision. Based upon this, coupled with the jurisdictional challenges raised, the Respondent submits that a Writ of Certiorari should not be issued to review the judgment and order of the Wyoming Supreme Court in this case.

Respectfully submitted,

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